

2005

Strieker v. Utah Labor Commission : Brief of Appellant

Utah Court of Appeals

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Von Marie Striker; pro se.

Mark D. Dean, Kristy L. Bertelsen; Blackburn & Stoll; Alan L. Hennebold, Elliott Lawrence; attorneys for appellees.

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Appeals Board Utah labor Commission
ORDER DENYING MOTION FOR REVIEW

Case No. 01-0448
20050209-CA
Appellants Brief

Parties to the proceedings:

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Statement of Jurisdiction

As per the Appeals Board, Utah Labor Commission, order denying motion for review, case number 01-0448 the next step in the legal process is to appeal the findings to the Utah Court of Appeals.

Statement of Issues

1. The Appeal Board ruled that Judge Eblin was within in the law to allow employer/insurer additional time to submit my medical records, thus I was not given the opportunity to review the records before they were presented to the court. I do not agree employer/insurer was allotted the same amount of time to gather data as I was. I had all the records at the time of the initial hearing. The reason employer/insurer did not have the records is because they admitted to me that they misplaced some of the records and could not find them. I believe employer/insurer knowingly did not produce the medical records at the initial hearing in order to mislead the court and not give me the opportunity to show that all the medical records were not available for the medical panel to review.
2. The Appeal Board ruled that employer/insurer did not have to supply me with copies of medical records that they supplied to the medical panel even though Judge Eblin requested that to be done at the initial hearing. I did not understand that the courts rulings were not binding. The judge's rulings should be complied with by employer/insurer.
3. The Medical panel did not have the experience or expertise to evaluate my condition, the ruling was not accurate and the panel clearly did not

understand the complexity of my injury. I can present medical evidence to support this position.

4. I am requesting that the reference to “future benefits” and “claim for additional benefits,” be stricken from the Utah Labor Commission, Appeal Board’s Judgment. Judge Eblin originally denied, on April 9th, 2004, four distinct procedures and not all future medical claims. Please refer to the April 9th, 2004 judgment.

Statement of grounds for review request

I can prove that employer/insurer did not supply all the necessary medical records to give the medical panel an opportunity to evaluate the entire case. I can prove that the medical panel's opinion is wrong.

Additionally, the Appeals Board, Utah Labor Commission, wrongly denied future benefits and did not follow the judgment set forth by Judge Eblin in the original ruling.

Summary of Case

As directed by Judge Eblin, employer/insurer did not supply me with all the medical records given to the medical panel. The Appeal Board ruled that under Commission rules, it was employer/insurer's obligation to obtain all the relevant medical records and then compile those records into an indexed and paginated medical exhibit. Since I know for a fact the employer/insurer did not have all my medical records, because that was admitted to me in conversations with employer/insurer's workers compensation case manager. How can I be assured that that the necessary records were supplied to the medical panel when employer/insurer did not have all the records.

The Appeal Board stated that the task of supplying medical is assigned to the employer/insurer because they have the staff and other resources necessary to accomplish the task. That to me seems like the fox guarding the hen house. That is not fair and just because I do not have the same opportunity to present my case as the employer/insurer does.

Additionally, the Appeal Panel ruled that if I had a desire to submit new medical evidence into the record it is my responsibility to obtain the evidence prior to the evidentiary hearing. I was under the opinion that when a judge rules in a hearing

that the employer/insurer was to provide me a copy of the records why would a prudent person not conclude that the judge's request is a legal requirement. If you do not have to do what the court requests then why even have the process?

Besides, I had no inclination that employer/insurer would not supply me a copy of the records. If I would have known that the Judge's rulings are not legally binding then by all means I would have requested records on my own. The judge knew I did not have a lawyer and did not understand the process, so she should have informed me that employer/insurer did not have to supply me the records even though judge Eblin required them to in the initial hearing. The judge should be neutral and protect both parties in the hearing. She protected employer/insurer by giving them more time to produce the medical records, but did not protect me by informing me that employer/insurer did not have to comply with the court's order to supply me a copy of the medical records.

I contend that the medical panel did not appreciate the significance and complexity of my injury. The Appeal Board ruled that the medical panel had access to my entire medical history. I can prove they did not. Please give me the opportunity to match my records against the employer/insurer records.

The Appeal Board concluded that the medical panel's report was impartial, thorough and well-reasoned. I do not agree with the impartial position. One of the medical panel physicians was a personnel friend with the employer/insurer lawyer. Mark Dean, employer/insurer's lawyer and Dr. Momberger both grew up in Alaska and their families were very close. They both moved to Salt Lake City and have lived here at least eight years. The right thing to do would have been for Dr. Momberger to step down from the review of this case. I do not feel comfortable that the review was impartial and would like to have another doctor evaluate my medical condition.

The Appeal Panel ruled that my treating physician for the last ten (10) years opinion did not matter because the medical panel reviewed my medical records that employer/insurer supplied them, observed me for two to three hours and were impartial experts in neurology and orthopedic surgery. I can prove they did not have all the records. I can prove they were not as qualified as my primary treating physician and made multiple mistakes in their opinion. Please give my Doctor the opportunity to testify.

Finally, the Utah Labor Commission, Appeal Board, denied future benefits and that exceeds the original denial for four (4) medical procedures. Please strike the reference to "future benefits and additional benefits," from the February, 3rd, 2005

order denying motion for review and at the minimum follow Judge Eblin's original ruling.

Summary of Argument and Conclusions

As required by Judge Eblin, employer/insurer did not supply me with a copy of the medical records. If the courts requests are not binding, then I should have been informed of that and I would have requested copies.

The medical panel did not have all my records to evaluate my case. I know this because employer/insurer has requested copies of my records multiple times and the last time we talked they had lost various records again.

The medical panel did not have all the records and did not have the expertise to properly evaluate my case.

Dr. Momberger and Mark Dean, plaintiff lawyer, were close friends and therefore the Doctor should have removed himself from the medical panel due to conflict of interest.

The following relief sought is as follows:

1. Employer/insurer pays for IDET surgery.
2. Employer/insurer pays for Foot surgery.
3. Employer/insurer pays for medication, Tolwin and Soma.
4. Employer pay for physical therapy related the injury.

5. The Labor Commission of Utah, Appeal Board ruled, “On April 9th, 2004, Judge Eblin adopted the medical panel’s opinion and, on basis, denied Ms. Strieker’s claim for additional benefits.” The original judgment on April 9th, 2004 did not deny additional benefits, it denied four specific requests:

- Payment of IDET surgery
- Payment of Foot surgery
- Payment of physical therapy related to the above surgeries.
- Denied payment for the use of pain medications, i.e., Tolwin and Soma.

I am requesting that the reference to “future benefits” be struck from the judgment and it be reworded to reflect the original judgment.

**APPEALS BOARD
UTAH LABOR COMMISSION**

VON MARIE STRIEKER,

Petitioner,

vs.

DELTA AIRLINES,

Respondent.

**ORDER DENYING
MOTION FOR REVIEW**

Case No. 01-0448

Von Marie Strieker asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Eblen's denial of Ms. Strieker claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Ms. Strieker was injured in two accidents while working for Delta Airlines during 1987. She has previously received medical and disability benefits for these injuries. On April 26, 2001, Ms. Strieker filed an application with the Commission's Adjudication Division to compel Delta to pay additional medical and disability benefits. In particular, Ms. Strieker sought payment of additional medical care allegedly necessary to treat her work-related injuries.

Judge Eblen held a hearing on Ms. Strieker's claim on June 10, 2002, and then referred the medical aspects of the claim to a medical panel. On April 9, 2004, Judge Eblen adopted the medical panel's opinion and, on that basis, denied Ms. Strieker's claim for additional benefits.

In her motion for review, Ms. Strieker alleges Judge Eblen applied more stringent evidentiary rules to Ms. Strieker than to Delta. Ms. Strieker also states she was not provided a copy of the medical records submitted by Delta to the medical panel and, therefore, does not know whether the records were complete. Finally, Ms. Strieker contends the medical panel did not understand the significance and complexity of her work-related injuries and subsequent treatment.

FINDINGS OF FACT

The Appeals Board adopts Judge Eblen's findings of fact.

ORDER DENYING MOTION FOR REVIEW

Von Marie Strieker

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DISCUSSION AND CONCLUSIONS OF LAW

Ms. Strieker raises several challenges to the medical evidence which is the basis for Judge Eblen's decision. Ms. Strieker's arguments are addressed below.

Different standards for submitting medical records. Ms. Strieker argues that, because Delta was allowed additional time to prepare and submit the joint medical record in this case, it was unfair to deny Ms. Strieker additional time to submit her own additional medical evidence. This argument misunderstands the nature and purpose of the joint medical record.

Under Commission rules, it was Delta's obligation to obtain all Ms. Strieker's relevant medical records and then compile those records into an indexed and paginated medical exhibit. This task is for the benefit of both the claimant and the employer/insurer, but the task is assigned to the employer/insurer because they have the staff and other resources necessary to accomplish the task. In most cases it would be impossible for the ALJ to resolve the case without the joint medical record. These facts explain why Judge Eblen allowed Delta additional time to complete the medical record. On the other hand, if a party desires to submit new medical evidence into the record, it is that party's responsibility to obtain the evidence prior to the evidentiary hearing. This requirement allows opposing parties to respond to the evidence in an orderly fashion.

It appears to the Appeals Board that Judge Eblen's actions in this case were consistent with the foregoing principles.

Delta's failure to provide Ms. Strieker with a copy of medical record. Ms. Strieker states that, because Delta did not provide her with a copy of the medical record exhibit in this matter, she is uncertain whether the record is accurate and complete. The Appeals Board agrees that Delta should have provided Ms. Strieker with a copy of the medical record, but Ms. Strieker could have requested her copy from Delta or reviewed the medical record on file with Judge Eblen. At this point in this proceeding, Ms. Strieker must demonstrate a material omission from the medical record. Her suggestion that the record "may" be incomplete is not a sufficient reason to disturb Judge Eblen's decision.

Accuracy of medical panel opinion. Finally, Ms. Strieker contends that the medical panel did not appreciate the significance and complexity of her work-related injuries and subsequent treatment. To support that contention, she has submitted a letter from her treating physician, Dr. Calodny. However, the Appeals Board notes that the medical panel consisted of impartial experts in neurology and orthopedic surgery. The panel members had access to Ms. Strieker's entire medical history as well as the opportunity to personally examine Ms. Strieker. The panel's report is impartial, thorough and well-reasoned. Having given due consideration to Dr. Calodny's opinion, the Appeals Board nevertheless accepts the medical panel's conclusion that Ms. Strieker's additional medical care is not necessary to treat the injuries she suffered in 1987 while working for Delta.

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ORDER DENYING MOTION FOR REVIEW
Von Marie Strieker
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ORDER

The Appeals Board denies Ms. Strieker's motion for review and affirms Judge Eblen's decision. It is so ordered.

Dated this 3rd day of February, 2005.


Colleen S. Colton, Chair


Patricia S. Drawe


Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

ORDER DENYING MOTION FOR REVIEW

Von Marie Strieker

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CERTIFICATE OF MAILING

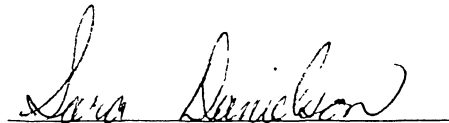
I certify that a copy of the foregoing Order Denying Motion For Review in the matter of Von Marie Strieker 2001448, was mailed first class postage prepaid this 3rd day of February, 2005, to the following:

VON MARIE STRIEKER
1402 WISTERIA LANE
LONGVIEW TX 75604

DELTA AIRLINES
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MARK DEAN
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A handwritten signature in cursive script, appearing to read "Sara Danielson", written over a horizontal line.

Sara Danielson
Utah Labor Commission

Petition for review.

Von Marie Strieker
1402 Wisteria Lane, Longview, Texas 75604
903-297-2163

IN THE UTAH COURT OF APPEALS

)	
Von Marie Strieker,)	PETITION FOR REVIEW
Petitioner,)	
VS.)	
)	Appeal No. _____
Delta Air Lines,)	Agency Decision No. _____
Respondent,)	

Notice is hereby given that Von Marie Strieker, petitioner, petitions the Utah Court of Appeals to review the order of the respondent made in this matter on February 3rd, 2005.

This petition seeks review of such part of the order that states that:

- Payment of IDET surgery is denied
- Payment of Foot surgery is denied
- Payment of physical therapy related to the above surgeries is denied.
- Denied payment for the use of pain medications, i.e., Tolwin and Soma.
- I am requesting that the reference to “future benefits” be struck from the

Utah Labor Commission, Appeal Boards judgment and it be reworded to reflect the original judgment that only denied four distinct medical treatments.

Petitioner requests the court to direct the respondent to prepare and certify to the court its entire record, which shall include all of the proceedings and evidence taken in this matter.

A handwritten signature in black ink, appearing to be "J. S. L.", written over a horizontal line.

Petitioner (if pro se)

CERTIFICATE OF SERVICE MUST BE ATTACHED

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Docketing Statement was mailed by first class mail on June 27, 2005 to the following:

Delta Air Lines

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Mark Dean

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Von M. Strieker

6-27-05

Date